MAPLE LEAF GOLD, INC. ET AL.

IBLA 84-407, 84-608 Decided February 10, 1988

Appeals from decisions of the Anchorage District Office, Bureau of Land Management, rejecting mining claim recordation filings and declaring mining claims null and void. F-60733 et al. and F-63999 et al.

Affirmed as modified.

1. Alaska: Land Grants and Selections -- Alaska: Mining Claims -- Alaska: Statehood Act -- Alaska Native Claims Settlement Act: Native Land Selections: State-Selected Lands -- Mining Claims: Withdrawn Land -- Segregation -- State Selections

   The filing of an amended state selection application after the conclusion of the 90-day withdrawal effected by 43 U.S.C. § 1616(d)(1) (1982) reasserts an earlier application filed during the withdrawal. Pursuant to 43 CFR 2627.4(b), a state selection, regular on its face, will segregate the land described therein from all appropriations based upon application or settlement and location, including locations under the mining laws, when the state files its application for selection in the proper office properly describing the lands as provided in sec. 2627.3(c)(1)(iii), (iv), and (v). This segregation arises as a result of the filing of a state selection and operates independently of the notation rule.

2. Alaska: Mining Claims -- Mining Claims: Lands Subject To -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

   Public Land Order No. 5251 continued in effect the withdrawal of lands in Alaska from location and entry under the mining laws that was initiated by the earlier Public Land Order No. 5179.

APPEARANCES: Robert G. Pruitt III, Esq., Salt Lake City, Utah, and Charles E. Cole, Esq., Fairbanks, Alaska, for appellants.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Maple Leaf Gold, Inc., and Mascot Mining, Inc. (appellants) have appealed from decisions of the Anchorage District Office, Bureau of Land Management (BLM), dated February 29 and April 24, 1984, rejecting mining claim recordation filings and declaring numerous placer mining claims null and void. 1/ BLM took this action because it found that all claims were located on lands closed to mineral entry on the date of location. Because of the similarity of factual and legal issues, the appeals from BLM's two decisions were consolidated at appellants' request by order of July 13, 1984.

Appellants contend in general that BLM erred in concluding that the lands at issue were not open to mineral entry. In support of its decisions, BLM states that State selection applications F-15175 and F-15182, Public Land Order Nos. (PLO's) 5184, 5653, and 5654, regional selection application F-21906-03, and section 206 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 410hh-5 (1982), segregate or withdraw these lands from mineral entry.

With the exception of 10 claims located in June 1973, 2/ appellants' mining claims were located between March and August 1976. All of the claims were located for placer gold, a metalliferous mineral. In order to determine whether the lands in the 10 townships involved were open to locations for metalliferous minerals in June 1973 and during this period in 1976, it is necessary to consider the effect of these State selections, the regional selection, and the PLO's affecting those townships before the locations were made. We will discuss the lands on which the claims were located in 1976 first.

Lands in T. 29 N., R. 16 W., Fairbanks Meridian

Appellants maintain that State selection application F-15182, filed on January 21, 1972, for lands including T. 29 N., R. 16 W., Fairbanks Meridian, was null and void at its inception because on the date of filing all unreserved public lands in Alaska had been withdrawn from all forms of appropriation under the public land laws, including the mining law (except locations for metalliferous minerals) and the mineral leasing laws. The withdrawal that appellants contend is applicable was limited in duration to 90 days after December 18, 1971, by section 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1616(d)(1) (1982). Appellants further contend that this state selection was withdrawn in accordance with a Memorandum of Understanding entered into by the Secretary of the Interior

1/ Mascot Mining, Inc.'s request, filed Mar. 19, 1986, to be substituted as a party, as the successor to the leasehold interests of Cinco Mining Joint Venture, is granted.

2/ These 10 claims were located on June 10, 1973, and have been assigned serial numbers F-63957 through F-63966 inclusive. The appendix to the BLM decision of Feb. 29, 1984, misstates the location date of claim F-63957.

and the Governor of Alaska as the basis for a stipulation for dismissal of litigation captioned State of Alaska v. Morton, No. A-48-72 (D. Alaska, Sept. 1, 1972) (Exh. D). The relinquishment of this selection was eventually indicated on the serial register page for selection F-15182 on April 18, 1973, appellants state. 3/

Appellants note that on April 19, 1974, the State sought "reinstatement" of selection application F-15182 and claim the State added new lands to the application. 4/ This action violated the stipulation in State of Alaska v. Morton, supra, appellants contend, and occurred after PLO's 5180 and 5251 had withdrawn the subject lands in 1972 from all forms of appropriation under the public land laws, including selections by the State of Alaska, and from location and entry under the mining laws, except for locations for metalliferous minerals. This reinstatement, in appellants' view, had no segregative effect because it involved lands not then available for State selection.

Further, appellants quote from a BLM decision dated August 8, 1984, rejecting State selection application F-15182 because that application was initially filed during the 90-day withdrawal effected by section 17(d)(1) of ANCSA. PLO's 5180 and 5251 are also cited by this BLM decision as well as ANILCA's section 201 establishing the Gates of the Arctic National Park and Preserve. The August 8, 1984, decision concludes by rejecting F-15182 as to T. 29 N., Rs. 13-15 W., and Ts. 30-32 N., Rs. 14-16 W., Fairbanks Meridian. Appellants contend that BLM's decision was never appealed by the State and conclude that the original and reinstated State selection applications were ineffective to segregate the public lands so as to preclude metalliferous mineral entry.

With respect to T. 29 N., R. 16 W., we point out that neither BLM's decision of August 8, 1984, nor the State's April 13, 1973, letter to BLM which set forth the lands it sought to delete from State selection GS-1919 (F-15182) in accordance with the September 1, 1972, Memorandum of Understanding, referred to this township. The Memorandum of Understanding provides that the State agreed to withdraw all its selections filed on January 21, 1972, "which are [for lands] not in PLO 5186" (Exh. D. at 10). This PLO, dated March 15, 1972, affects all of T. 29 N., R. 16 W. See 37 FR 5589, 5590 (Mar. 16, 1972).

3/ The serial register page for F-15182 in the file does not contain such an indication. The case file abstract does note "relinquishment filed" on Apr. 18, 1973, but does not specify the townships affected.

4/ In fact, no new lands were sought by this "reinstated" application. The State's original application sought all lands in Ts. 29-32 N., Rs. 13-16 W, Fairbanks Meridian. The State's Apr. 19, 1974, request (which was granted on Aug. 30, 1974), sought all lands in T. 29 N., Rs. 13-15 W., and Ts. 30-32 N., Rs. 14-16 W. By complaint styled State of Alaska v. Morton, No. J74-3 Civ. (D. Ak. filed Apr. 19, 1974), the State specified that such reinstatement occur ab initio (Exh. E at P25).

[1] Even if we assume that selection application F-15182 was filed at a time when T. 29 N., R. 16 W., was not open for State selection as a result of the 90-day withdrawal effected by section 17(d)(1), we note selection file F-15182 reveals that this selection application was amended on June 16, 1972, to exclude patented lands. 5/ This amendment had the effect of reasserting the State's application at a time when T. 29 N., R. 16 W., was clearly available for State selection. Udall v. Kalerak, 396 F.2d 746, 748 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969). PLO 5180, 37 FR 5583 (Mar. 16, 1972), did not apply to this township, and neither Notice of Proposed Classification of Lands for Multiple Use Management F-12450, 35 FR 18003 (Nov. 24, 1970), nor PLO 5186, 37 FR 5589 (Mar. 16, 1972), which did apply to this township, precluded State selection of the lands. 43 CFR 2627.4(b) describes the effect of a pending application:

> (b) Segregative effect of applications. Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the state files its application for selection in the proper office properly describing the lands as provided in § 2627.3(c)(1)(iii), (iv), and (v).

All of appellants' claims 6/ in T. 29 N., R. 16 W., were located at a time when the lands were segregated by amended State selection F-15182. It is well established that a mining claim located on land segregated from mineral entry is properly declared null and void ab initio. Joe D. Denson, 43 IBLA 136 (1979). BLM's decision of April 24, 1984, is, accordingly, affirmed as modified with respect to the claims in this township.

Lands in Ts. 29-32 N., R. 15 W., Ts. 31-32 N., R. 14 W., and Ts. 28 and 30 N., R. 16 W., Fairbanks Meridian

BLM's two decisions also rejected the claims in Ts. 29-32 N., R. 15 W., and Ts. 31-32 N., R. 14 W., and Ts. 28 and 30 N., R. 16 W., because these lands were segregated from mineral entry by Alaska's April 19, 1974, request to reinstate its original selection applications F-15182 and F-15175. Because the State's 1974 request sought to reinstate its selection applications ab initio

---

5/ In addition, the file for F-15182 contains a letter filed with BLM by Alaska on Mar. 17, 1972, which reads:

"It was the State's intent in filing the referenced applications to acquire all open available lands within these townships, subject to prior valid rights, claims and patented lands. Pursuant thereto, the State, by this letter-amendment, hereby reasserts and reaffirms its rights to acquire all open available lands within these townships, including all lands which have heretofore been withdrawn and subsequently restored to public domain."

6/ Based on information set forth on topographic maps in the record, these claims on appeal appear to be identified by serial numbers F-63999, F-64016 through F-64021 inclusive, F-64035, F-64069, and F-64070.

(see note 4, supra), an examination of the effect of the 1974 request would necessarily involve an examination of the State's original 1972 selections. As noted above, the State's original selection applications were a source of litigation and eventual compromise in 1972, a fact that may have caused the State to file no appeal from the BLM decision of August 8, 1984, rejecting selection application F-15182. Because the State has at no time been a party to this appeal and because an alternative basis for BLM's decisions concerning the claims on these lands exists, we decline to rule on the validity of the State's original 1972 selection applications.

[2] With respect to appellants' claims in Ts. 29-32 N., R. 15 W., and Ts. 31-32 N., R. 14 W., and Ts. 28 and 30 N., R. 16 W., PLO 5251, 37 FR 18911 (Sept. 16, 1972), withdrew each of these townships from metalliferous location on September 12, 1972, before appellants located their claims. PLO 5251 amended PLO 5180 of March 9, 1972, 37 FR 5583 (Mar. 16, 1972), by adding the lands described above, among others, to those enumerated in PLO 5180 for study "to determine the proper classification of the lands and to ascertain the public values in the lands that need protection as provided for by section 17(d)(1) of the Act." 37 FR 18911, 18913 (Sept. 16, 1972). Section 17(d)(1) of ANCSA, in addition to effecting the 90-day withdrawal period discussed above, directed the Secretary to use this 90-day period to review the public lands in Alaska and determine whether any portion should be withdrawn under existing authority to ensure that the public interest in these lands is properly protected. 7/

Before being described in PLO 5251, Ts. 29-32 N., R. 15 W., and Ts. 31-32 N., R. 14 W., and Ts. 28 and 30 N., R. 16 W., had been withdrawn by PLO 5179, 37 FR 5579 (Mar. 16, 1972), from all forms of appropriation under the public land laws, including selection by the State of Alaska, from location and entry under the mining laws, from leasing under the Mineral Leasing Act, 30 U.S.C. § 181-287 (1982), and from selection by regional corporations under section 12 of ANCSA. The lands were reserved for study and possible recommendation to Congress as additions to or for creation as units of the "four systems," i.e., National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems. PLO 5179 states that it was issued by virtue of the

---

7/ Section 17(d)(1) continues:

"Any further withdrawal shall require an affirmative act by the Secretary under his existing authority, and the Secretary is authorized to classify or reclassify any lands so withdrawn and to open such lands to appropriation under the public land laws in accord with his classifications. Withdrawals pursuant to this paragraph shall not affect the authority of the Village Corporations, the Regional Corporations, and the State to make selections and obtain patents within the areas withdrawn pursuant to section 11 [43 U.S.C. § 1610 (1982)]."
43 U.S.C. § 1616(d)(1) (1982).

authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), and by virtue of the authority vested in the Secretary in section 17(d)(2)(A) of ANCSA. 8/

PLO 5251 precluded metalliferous locations because, although it added the lands at issue to PLO 5180, an order allowing metalliferous locations, it qualified the transfer of lands from PLO 5179 to PLO 5180 with the following language:

> Any use or disposition permitted by this order [PLO 5251] but forbidden by earlier withdrawals or classifications remains forbidden. Any use or disposition forbidden by this order but permitted by an earlier withdrawal or classification is forbidden. With the exceptions noted in paragraph 2, [not here applicable] any of the lands described in this order are deleted from those listed in paragraph 1 of Public Land Order No. 5179, as amended by Public Land Order No. 5192. [Emphasis supplied.]

37 FR 18913 (Sept. 16, 1972).

Because metalliferous locations were prohibited by the earlier PLO 5179, they remained prohibited by the terms of PLO 5251. 9/ Accordingly, all of appellants' claims in Ts. 29-32 N., R. 15 W., Ts. 31-32 N., R. 14 W., and Ts. 28 and 30 N., R. 16 W., may be properly declared null and void because they

---

8/ Section 17(d)(2)(A) of ANCSA did not grant new withdrawal authority to the Secretary. As with section 17(d)(1) withdrawals, the Secretary was directed to use his existing authority in making any withdrawals under section 17. Section 17(d)(2)(A), 43 U.S.C. § 1616(d)(2)(A) (1982), provides:

"(2)(A) The Secretary, acting under authority provided for in existing law, is directed to withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, and from selection by Regional Corporations pursuant to section 11 [43 U.S.C. § 1610 (1982)], up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska, including previously classified lands, which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems: Provided, That such withdrawals shall not affect the authority of the State and the Regional and Village Corporations to make selections and obtain patents within the areas withdrawn pursuant to section 11."

9/ See Harry H. Wilson, 35 IBLA 349 (1978), appeal filed, Wilson v. United States, Civ. Action #A-78-225 (D. Alaska Aug. 28, 1978). See also Norman and Silver, "Alaska's D-2 Lands," Alaska Mineral Development Institute, Paper 5, page 69 (Rocky Mountain Mineral Law Foundation, 1978). We do not accept appellants' argument that references in the October 1974 Final Environmental Impact Statement on the proposed Gates of the Arctic National Park that "D-1" lands are open to location of metalliferous claims supersede this language of PLO 5251.

were located at a time when the lands were withdrawn from metalliferous locations by PLO 5251. Appellants' location notices for claims in those townships are, accordingly, properly rejected by BLM.

Because we base the invalidity of appellants' claims in Ts. 29-32 N., R. 15 W., Ts. 31-32 N., R. 14 W., and Ts. 28 and 30 N., R. 16 W., on the terms of PLO 5251, BLM's decisions affecting these townships must be affirmed as modified. As indicated above, we do not need to determine whether Alaska's original selection applications F-15182 and F-15175 or its 1974 request for reinstatement of the above-described lands segregated the lands at issue.

Lands in T. 31 N., R. 13 W., Fairbanks Meridian

Our discussion thus far has not addressed appellants' claims in T. 31 N., R. 13 W. According to the BLM decision of February 29, 1984, nine claims on appeal were located on June 10, 1973, in T. 31 N., R. 13 W. 10/ BLM held these claims to be null and void because PLO 5184, 37 FR 5588 (Mar. 16, 1972), withdrew this township 11/ on March 15, 1972, from all forms of appropriation under the public land laws, including location and entry under the mining laws, and reserved the lands for study and review by the Secretary.

Appellants contend that on the effective date of PLO 5184, T. 31 N., R. 13 W., was not land withdrawn by section 11(a)(1) of ANCSA, 43 U.S.C. § 1610(a)(1) (1982), and, consequently, was not affected by PLO 5184. In support of this contention appellants state that several months after PLO 5184 was issued, T. 31 N., R. 13 W., was included in PLO 5213, 37 FR 11244 (June 6, 1972), effective June 5, 1972, which withdrew that township under section 11(a)(3) of ANCSA.

Appellants rely on John C. & Martha W. Thomas, dba Tungsten Mining Co., 53 IBLA 182, vacated on reconsideration, 59 IBLA 364 (1981), for the proposition that PLO 5184 has no segregative effect. Appellant also suggest that PLO 5213 similarly lacks a segregative effect because the statute cited by the Secretary to make this withdrawal, section 11(a)(3) of ANCSA, 12/ limits section 11(a)(3) withdrawals to "unreserved, vacant, and unappropriated public lands." 43 U.S.C. § 1610(a)(3)(A) (1982). Because T. 31 N., R. 13 W., was subject to a proposed multiple-use classification order, F-12450, 35 FR 18003 (Nov. 24, 1970), at the time PLO 5213 was issued, appellants suggest that T. 31 N., R. 13 W., was not unreserved, vacant, and unappropriated public land.

BLM relied on PLO 5184 and regional selection F-21906-03, filed December 18, 1975, for its conclusion that T. 31 N., R. 13 W., was not open to

10/ In fact it is 10 claims. See note 2, supra.
11/ Ts. 31-32 N., R. 14 W., Fairbanks Meridian, are also noted in BLM's decisions as being within PLO 5184.
12/ Actually, PLO 5213 cites both section 11(a)(3) and 17(d)(1) of ANCSA, as well as Exec. Order No. 10355 of May 26, 1952 (17 FR 4831), as authority for withdrawing lands described therein from location and entry under the mining laws. 37 FR 11244 (June 6, 1972).

mineral entry. As appellants point out, paragraph 1 of PLO 5184 withdrew from location and entry under the mining laws only lands withdrawn by section 11 of ANCSA. Section 11(a)(1) in turn withdrew a number of townships surrounding certain identified Native villages. Although current master title plats and historical indices state that PLO 5184 affects all lands within T. 31 N., R. 13 W., BLM acknowledged in response to our Order of October 21, 1985, requesting certain master title plats and historical indices for this township, that no Native village is so located as to support the notation of PLO 5184 on the records of this township. 13/ BLM's reliance on PLO 5184 is therefore misplaced.

BLM's reliance on the 1975 regional selection F-21906-03 for segregative effect when the claims were located in 1973 is also misplaced. However, before this selection, T. 31 N., R. 13 W., was specifically named in PLO 5213, 37 FR 11244 (June 6, 1972), withdrawing lands described therein from location and entry under the mining laws. As indicated above (see note 12), sections 17(d)(1), 11(a)(3), and Executive Order No. 10355 are set forth in PLO 5213 as authority for its issuance. PLO 5213 was effective before the earliest of appellants' locations in this township and, by itself, is a sufficient basis for declaring null and void ab initio all of appellants' claims here. Regional selection F-21906-03, which we presume to have been made under section 12 of ANCSA, 43 U.S.C. § 1611 (1982), simply extended the withdrawal under section 11(a)(3) of ANCSA, as explained below.

Appellants correctly state that section 11(a)(3) authorizes the withdrawal of only unreserved, vacant, and unappropriated public lands; the analogous limitation of section 17(d)(1) refers to unreserved lands. Contrary to appellants' suggestion, however, nothing in classification notice F-12450 prevents PLO 5213 from attaching to T. 31 N., R. 13 W. Notice F-12450 proposed to classify certain described "public lands" for multiple use management. As used in F-12450, "public lands" means "any lands not withdrawn or reserved for a Federal use or purpose." See 35 FR 18003 (Nov. 24, 1970). Publication of notice F-12450 had the effect of segregating lands described therein, including T. 31 N., R. 13 W., from appropriation under the agricultural land laws, the trade and manufacturing site act, and the headquarters site law, and the homesite law. 35 FR at 18003. It did not, however, withdraw the land from mineral entry. Id.

Notice F-12450 specifically states that its publication will not affect valid existing rights or the determination and protection of the rights of Native Aleuts, Eskimos, and Indians of Alaska. Id. Because the withdrawal authorized by section 11(a)(3) of ANCSA is to allow village and regional corporations organized by such groups to select deficiency lands, we do not find that notice F-12450 would prevent application of PLO 5213 to those lands

13/ Unlike the current land records, the Mar. 23, 1973, master title plat in existence when appellants located their claims in this township makes no reference to PLO 5184.

described in both the notice and that PLO. As noted at 43 U.S.C. § 1621(h) (1982), a withdrawal authorized by section 11(a)(3) terminates within 4 years of December 18, 1971, unless before then a village or regional corporation selects lands so withdrawn. The filing of regional selection F-21906-03 by Doyon, Ltd., on December 18, 1975, extended the 4-year period of withdrawal begun under section 11(a)(3) by PLO 5213.

On the basis of PLO 5213, therefore, we affirm, as modified, BLM's February 24, 1984, decision as to the claims in this township.

We note that BLM's decisions also mentioned PLO's 5653 and 5654 and the provisions of section 206 of ANILCA as providing further segregation of the lands from mineral entry. These PLO's, dated November 16 and 17, 1978, respectively, and section 206, enacted on December 2, 1980, became effective after location of all of appellants' claims. Because the withdrawals effected by these instruments were expressly made subject to valid existing rights, they do not affect any mining claim previously located on land open to mineral entry. In the event new locations are made, these withdrawals would be relevant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Anchorage District Office are affirmed as modified.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

R. W. Mullen
Administrative Judge